# Petition

Office - Supreme Court, U.S.
FILED
SEP 24 1981
ALEXANDER L. STEVAS,
CLERK

81-593

No._____

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

PEOPLE OF THE STATE OF MICHIGAN,
Petitioner,
-vs-
LAMONT CHARLES THOMAS,
Respondent.

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

L. BROOKS PATTERSON
PROSECUTING ATTORNEY
OAKLAND COUNTY

ROBERT C. WILLIAMS
CHIEF APPELLATE COUNSEL

By: GEOFFREY H. NICKOL (P29493)
Assistant Prosecuting Attorney
1200 North Telegraph Road
Pontiac, Michigan 48053
(313) 858-0685

Interstate Brief & Record Co., Wurlitzer Bldg., 1509 Broadway, Detroit, MI 48226
(313) 962-8745

## QUESTION PRESENTED

WHETHER THE POLICE CAN SEARCH AN AUTOMOBILE WITHOUT FIRST OBTAINING A WARRANT ONCE PROBABLE CAUSE DEVELOPS TO DO SO DURING THE CONDUCT OF AN ON-THE-SCENE INVENTORY SEARCH?

## TABLE OF CONTENTS


| | Page |
|---|---|
| Table of Authorities | i |
| Citation to Opinions Below | 1 |
| Jurisdiction | 2 |
| Constitutional Provision Involved | 2 |
| Statement of Facts | 3 |
| Reasons for Granting the Writ | 5 |
| Conclusion | 9 |
| Appendix "A" — Order of the Supreme Court of the State of Michigan | 10 |
| Appendix "B" — Opinion of the Court of Appeals of the State of Michigan | 11 |


## TABLE OF AUTHORITIES

**Constitutional Authorities:**


United States Constitution, Amendment IV ..... 2


**Cases:**


Cady v Dombrowski, 413 US 433; 93 S Ct 2523; 37 L Ed 2d 706 (1973) ..... 7

Chambers v Maroney, 399 US 42; 90 S Ct 1975, 26 L Ed 2d 419 (1970) ..... 2,5,6,7,8

Page

Coolidge v New Hampshire, 403 US 443; 71 S Ct 2022; 21 L Ed 2d 564 (1971) ..... 8

Texas v White, 423 US 67; 96 S Ct 304; 46 L Ed 2d 209 (1975) ..... 6,8

**Statutory Authorities:**

MCL 750.227; MSA 28.424 ..... 3

28 USC 1257(3) ..... 2

No._____

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

PEOPLE OF THE STATE OF MICHIGAN,
Petitioner,
-vs-
LAMONT CHARLES THOMAS,
Respondent.

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

## CITATIONS TO OPINIONS BELOW

The decision of the Michigan Supreme Court denying leave to appeal was filed on July 28, 1981, and is reported at — Mich —; — NW2d — (1981). Petitioner had appealed from a decision of the Michigan Court of Appeals, reported at — Mich App —; — NW2d — (1981). Although the Court of Appeals did not originally intend to publish the opinion, the Court decided to

do so in a letter dated June 2, 1981, stating that the opinion would be significant to the jurisprudence of the State. Copies of the Michigan Supreme Court order and the Michigan Court of Appeals opinion are included in the Appendix to this Petition.

## JURISDICTION

The order of the Michigan Supreme Court was filed on July 28, 1981. The jurisdiction of this Court is invoked under 28 USC 1257(3). The Court of Appeals' decision is based on the United States Supreme Court case, *Chambers* v *Maroney*, 399 US 42; 90 S Ct 1975; 26 L Ed 2d 419 (1970).

## CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision which this petition involves is:

Constitution of the United States, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## STATEMENT OF FACTS

On May 15, 1979, Respondent Lamont Thomas was convicted in an Oakland County Circuit Court bench trial of carrying a concealed weapon, contrary to MCL 750.227; MSA 28.424. On August 17, 1979, Appellant was sentenced to an imprisonment term of three (3) to five (5) years.

On August 16, 1979, Respondent made a motion for a new trial or a judgment notwithstanding the verdict, claiming that the gun upon which the charge was based was produced through an illegal search and seizure. The motion was denied by the trial judge, who was unable to conclude that the search and seizure was unreasonable. Respondent appealed as of right to the Court of Appeals, who reversed his conviction because of the illegal search and seizure on February 9, 1981. On March 17, 1981, the Court of Appeals denied Petitioner's Application For Rehearing. On July 28, 1981, the Michigan Supreme Court denied Petitioner's Application For Leave To Appeal.

At trial, Sergeant Hawks testified that he and his partner, Office Brown, stopped a vehicle on Lake Street in Pontiac, Michigan, that had failed to make a signal for a left-hand turn at the intersection of Orchard Lake Road and Lake Street. (R, 25) Hawks noticed the passenger in the right front seat, identified as Respondent, bend over very low, with his head below the dashboard. (R, 26)

Upon approaching the vehicle with his weapon unholstered, Hawks observed an open bottle of malt liquor standing upright on the floorboard between Respondent's feet. (R, 28) The bottle would have fit into the space underneath the passenger seat. (R, 29)

Hawks placed Respondent under arrest for open intoxicants in a motor vehicle. (R, 20) The driver of the vehicle was issued a citation for failure to have a driver's license. (R, 30)

When asked whose vehicle it was, Respondent stated, "Me and my old lady's." (R, 30) Respondent and the driver were taken to the patrol vehicle. (R, 30) Nobody was present at the scene who could have driven the vehicle back to Respondent's house. (R, 31) Pursuant to departmental policy, a wrecker was called to tow the vehicle. (R, 31)

Prior to arrival of the wrecker, Officer Brown searched the vehicle, pursuant to departmental policy that a vehicle be searched prior to being towed. (R, 31) Brown discovered two (2) bags of marijuana in the glove compartment. (R, 31) Upon Brown's return to the patrol vehicle, Hawks asked her if she checked underneath the dashboard of the vehicle. (R, 57) Brown replied that she had not. (R, 57) Sergeant Hawks proceeded to search the air vent underneath the dashboard on the passenger's side of the vehicle and discovered a loaded .35 Smith and Wesson revolver. (R, 31)

Officer Brown testified that, upon approaching the vehicle, she observed the front passenger, identified as Respondent, bent over forward in the seat, with the top of his head level with the dashboard. (R, 66)

The driver of the vehicle was unable to produce a driver's license. (R, 67) The driver stated that her age was thirteen or fourteen. (R, 67)

## REASONS FOR GRANTING THE WRIT

Petitioner argued before the Michigan Court of Appeals that the search of the air vent by the police was not improper, contending that the police could properly search the vehicle at the scene since probable cause developed once marijuana was discovered in the glove compartment. Citing the United States Supreme Court decision in *Chambers* v *Maroney*, 399 US 42; 90 S Ct 1975; 26 L Ed 2d 419 (1970), the Court of Appeals held that the police could not search the automobile without a warrant because there were no exigent circumstances which would justify a search without a warrant. The Court noted that the automobile was already being lawfully taken into police custody and that there was no danger that the automobile would flee and no longer be available after obtaining a search warrant. The Court stated that the police could apply for a search warrant without any reasonable possibility that the car would be taken out of the jurisdiction or the contraband removed.

The police had probable cause to believe that the area underneath the dashboard of Respondent's vehicle contained marijuana or other contraband. During Officer Brown's inventory search, which was held by the Court of Appeals to be reasonable, she discovered marijuana in the glove compartment. This fact, coupled with Sergeant Hawk's observation of Respondent bending over in the front seat, gave Hawks probable cause to believe that the area underneath the dashboard contained additional marijuana or contraband. The Court of Appeals' opinion did not address the issue of probable cause. The Court passed that threshold issue and addressed the question whether exigent circumstances justified a warrantless search.

The Court of Appeals wrongfully held that the police cannot conduct a warrantless search of an automobile once they determine there is a probable cause to do so during the conduct of an on-the-scene inventory search. Under the Court's holding, once probable cause developed that the automobile contained contraband, the police had two alternatives. They could have held the car at the scene until a warrant was secured or they could have allowed the car to be towed away even though they had reason to believe it contained contraband. Under the Fourth Amendment, the police were not forced to choose between the two undesirable options.

The Fourth Amendment did not require that the police hold the car at the scene until a warrant could be procured. In *Chambers* v *Maroney, supra*, this Court held that, for constitutional purposes, there is no difference between, on the one hand, holding a car before presenting the probable cause issue to the magistrate and, on the other hand, carrying out an immediate search without a warrant. As long as there is probable cause to search either action is reasonable under the Fourth Amendment. In *Texas* v *White*, 423 US 67; 96 S Ct 304; 46 L Ed 2d 209 (1975), this Court held that the police properly searched the vehicle prior to obtaining a warrant, even though there was no danger that the car would flee or evidence would be lost. The car was secured at the station house. The crucial fact was that there was probable cause to search at the scene.

The Fourth Amendment did not require that the police allow an automobile they had probable cause to believe contained contraband to be towed away prior to a search. The automobile would have been vulnerable to mishap during the time of its travel from the scene to the impoundment lot. Such a circumstance provides a

sufficient justification to search at the scene. In *Cady* v *Dombrowski*, 413 US 433; 93 S Ct 2523; 37 L Ed 2d 706 (1973), this Court pointed out that although the original justification for treating automobiles differently from houses for Fourth Amendment purposes was the mobile nature of automobiles, searches of vehicles have been sustained in cases where the possibilities of the vehicle being removed or evidence in it destroyed were remote, if nonexistent. Although the possibility of the contraband in Respondent's vehicle being lost during the towing period might have been minimal, the degree of risk alone does not determine whether the warrantless search on the scene was reasonable.

The Court of Appeals held that the police could not make a warrantless search, because they had custody of the car and, thus, there were no exigent circumstances. As pointed out by this Court in *Chambers* v *Maroney*, however, mere control of a vehicle does not necessitate the procurement of warrant under the Fourth Amendment. The instant case differs from *Chambers* v *Maroney, supra*, only in that probable cause developed after the initial police impoundment of the vehicle. This factual difference is not of constitutional significance. The police initially impounded the automobile because neither occupant could drive it, and, if left on the road, the vehicle would obstruct traffic and jeopardize public safety. Presumably, had an acquaintance of Respondent arrived at the scene, Respondent could have authorized the acquaintance to take control over the car.

Once probable cause developed that the vehicle contained contraband, the police were no longer holding the car to prevent it from obstructing traffic. At this point, the police were entitled to exercise the same type of control over the car that was exercised in *Chambers* v *Maroney, supra*, and *Texas* v *White, supra*. In *Chambers* v

*Maroney, supra*, this Court held that the police did not have to hold the car until a warrant could be obtained. A warrantless search at the scene was constitutionally permissible.

The instant case must be distinguished from cases where there was an opportunity to procure a warrant prior to the stop and seizure of the vehicle. In *Coolidge* v *New Hampshire*, 403 US 443; 71 S Ct 2022; 21 L Ed 2d 564 (1971), this Court held that a warrrantless search and seizure of an automobile violated the Fourth Amendment because the police had ample opportunity to procure a warrant prior to the search and seizure. In the instant case, the police did not have probable cause to search the vehicle until after it was stopped. There was no opportunity to procure a warrant before the stop and seizure. Once probable cause developed at the scene, however, the search was proper even though a warrant had not been obtained.

In summary, the Michigan Court of Appeals wrongfully held that the police could not conduct a warrantless search of an automobile once probable cause developed to do so after the police impounded the car to keep it from obstructing traffic. Once probable cause to search developed, the police could have held the automobile until a warrant was obtained, regardless of whether the car continued to pose a traffic hazard. Under the Fourth Amendment, the police can conduct a warrantless search of an automobile on the scene rather than hold the car until a warrant is obtained. Because the Court of Appeals has wrongfully decided this Federal Constitutional issue, this Court should grant this petition for a writ of certiorari and hold that the search by the police was proper.

## CONCLUSION

WHEREFORE, Petitioner respectfully requests that this Honorable Court grant this petition for a writ of certiorari to review the judgment of the Michigan Court of Appeals.

Respectfully submitted,

L. BROOKS PATTERSON
PROSECUTING ATTORNEY
OAKLAND COUNTY

ROBERT C. WILLIAMS
CHIEF APPELLATE COUNSEL

By: GEOFFREY H. NICKOL (P29493)
ASSISTANT PROSECUTING ATTORNEY

Dated: September 15, 1981

# Appendix

## APPENDIX "A"

### ORDER OF THE SUPREME COURT OF THE STATE OF MICHIGAN

(People of the State of Michigan, Plaintiff-Appellant, v Lamont C. Thomas, Defendant-Appellee, SC: 67320; COA; 47880; LC: 79-40128-FY)

At A Session Of The Supreme Court Of The State Of Michigan, Held at the Supreme Court Room, in the City of Lansing, on the 28th day of July in the year of our Lord one thousand nine hundred and eighty one.

Present the Honorable Mary S. Coleman, Chief Justice, Thomas Giles Kavanagh, G. Mennen Williams, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., Associate Justices

On order of the Court, the delayed application for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the question presented should be reviewed by this Court.

*(certification omitted)*

## APPENDIX "B"

## OPINION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN

(People of the State of Michigan, Plaintiff-Appellee, vs Lamont C. Thomas, Defendant-Appellant. No. 47880)

Before: T.M. Burns, P.J.; Beasley and G.R. Deneweth, JJ.

PER CURIAM

Defendant, Lamont C. Thomas, was convicted in a bench trial of carrying a concealed weapon, contrary to MCL 750.227; MSA 28.424, and was sentenced to not less than three years nor more than five years in prison. He made a motion for a new trial, claiming that the gun upon which the charge was based was produced through an illegal search and seizure. Upon denial of the motion, defendant appeals as of right.

Defendant was the front-seat passenger in an automobile that was stopped for failing to signal a left turn. Upon approaching the stopped vehicle, Sergeant Hawks and Officer Brown observed defendant bend forward so that his head was at or below the level of the dashboard. Sgt. Hawks found an open bottle of malt liquor standing upright on the floor-board between defendant's feet and placed him under arrest for open intoxicants in a motor vehicle. The 14-year-old driver of the car was issued a citation for having no valid operator's license on her person.

Defendant and the driver were taken to the patrol vehicle and, pursuant to departmental policy, a wrecker

was called to tow the vehicle. No one was present at the scene who could have driven the vehicle back to defendant's house.

Prior to the arrival of the wrecker, Officer Brown searched the vehicle. This was pursuant to departmental policy that vehicles be searched prior to being towed. Officer Brown discovered two bags of marijuana in the unlocked glove compartment. Upon Brown's return to the patrol car, Sgt. Hawks asked her if she had checked underneath the dashboard. Brown replied that she had not.

Sgt. Hawks proceeded to make a second search of the vehicle. He checked under the front seat and looked up under the dashboard. He opened the two vent doors under the dash and looked inside the air vents. He also unlocked the trunk and checked inside it. Hawks discovered a loaded, .38 revolver in the air vent on the passenger's side of the vehicle. Neither officer made a list of the items found in the vehicle.

Defendant claims that the inventory search of his automobile was unreasonable in scope and was merely a pretext for a prohibited search without a warrant. Therefore, he claims the subsequent seizure of the gun was unreasonable and a violation of his Fourth Amendment rights.[1] Plaintiff argues that the seizure of defendant's automobile and the subsequent search of its interior properly falls within the inventory search exception to the warrant requirement of the Fourth Amendment.

The validity of inventory searches of impounded vehicles was upheld by the United States Supreme Court

---

[1] US Const, Am IV.

in *South Dakota* v *Opperman*.[2] In *Opperman*, the police found a bag of marijuana in an unlocked glove compartment during an inventory search of a car that had been impounded for multiple traffic violations. The court held that the conduct of the police was reasonable under the Fourth Amendment, stating that whether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case.[3]

The court noted that in the case before them, the inventory search was part of standard police procedure and that there was no suggestion that this procedure was a pretext concealing an investigatory motive. It further noted that the inventory search was not unreasonable in scope, since a car's glove compartment is a customary place for the temporary storage of valuables and since vandals would have had ready and unobstructed access to an unlocked glove compartment once inside the car.

In regards to the authority of police to impound vehicles, the court stated:

> "In the interests of public safety and as part of what the Court has called 'community caretaking functions,' *Cady* v *Dombrowski, supra*, at 441, 37 L Ed 2d 706, 93 S Ct 2523, automobiles are frequently taken into police custody. Vehicle accidents present one such occasion. To permit the uninterrupted flow of traffic and in some

---

[2] 428 US 364; 96 S Ct 3092; 49 L Ed 2d 1000 (1976). For Michigan cases which have followed *Opperman*, see, *People* v *Long*, 94 Mich App 338; 288 NW2d 629 (1980); *People* v *Goodwin*, 94 Mich App 286; 288 NW2d 354 (1980); *People* v *Boutell*, 80 Mich App 216; 263 NW2d 36 (1977).

[3] *Opperman, supra*, at pp 375-376.

> circumstances to preserve evidence, disabled or damaged vehicles will often be removed from the highways or streets at the behest of police engaged solely in caretaking and traffic-control activities.
>
> "Police will also frequently remove and impound automobiles which violate parking ordinances and which thereby jeopardize both the public safety and the efficient movement of vehicular traffic. The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge."[4]

The court stated three reasons behind the practice of inventorying an impounded vehicle's contents: (1) the protection of the owner's property while it remains in police custody; (2) the protection of the police against claims or disputes over lost or stolen property; and (3), the protection of the police from potential danger.[5]

In the instant case, defendant had been lawfully placed in custody after having been arrested for open intoxicants in a motor vehicle.[6] Since the other occupant of the vehicle was too young to legally drive, it was proper for the police to impound the car rather than leaving it parked on the road where it might obstruct traffic and jeopardize public safety. Under these circumstances, it was reasonable, pursuant to departmental policy, to conduct an inventory search of the vehicle prior to its being towed.

---

[4] *Opperman, supra*, at pp 368-369.

[5] *Id.*

[6] *People* v *Edwards*, 73 Mich App 579, 584; 252 NW2d 522 (1977).

We find, however, that the search conducted was unreasonable in scope. Air vents, unlike glove compartments,[7] or trunks,[8] are not a customary place for storage of valuables. Nor are they an area within plain view. We believe that the facts and circumstances in this case, particularly Sgt. Hawks' second thorough search which included the air vents and area underneath the car's dashboard, indicate that the "inventory" search here went beyond a mere search for valuables prior to the impounding of the car. Rather, it appears to have been made solely to search for contraband and, thus, since no effort was made to obtain a warrant, was an impermissible, warrantless search.[9]

Plaintiff contends that even if the inventory search of the front air vent conducted by Sgt. Hawks was unreasonable in scope, the search of the vent and the subsequent seizure of the gun was nonetheless proper. Plaintiff claims that Sgt. Hawks had probable cause to believe a crime was being committed in his presence and, therefore, could properly search the car after Officer Brown discovered marijuana in the glove compartment during her inventory search. We do not agree.

In *Chambers* v *Maroney*,[10] the United States Supreme Court recognized that automobiles could be searched without a warrant in circumstances which would not justify the search without a warrant of a house or an office. The court said:

> "Neither *Carroll, supra*, nor other cases in this Court require or suggest that in every conceivable

---

[7] *People* v *Goodwin, supra.*

[8] *People* v *Long, supra.*

[9] *People* v *Roberson*, 80 Mich App 241, 243; 263 NW2d 42 (1977).

[10] 399 US 42; 90 S Ct 1975; 26 L Ed 2d 419 (1970).

circumstance the search of an auto even with probable cause may be made without the extra protection for privacy that a warrant affords. But the circumstances that furnish probable cause to search a particular auto for particular articles are most often unforeseeable; moreover, the opportunity to search is fleeting since a car is readily movable. Where this is true, as in *Carroll* and the case before us now, if an effective search is to be made at any time, either the search must be made immediately without a warrant or the car itself must be seized and held without a warrant for whatever period is necessary to obtain a warrant for the search.

"In enforcing the Fourth Amendment's prohibition against unreasonable searches and seizures, the Court has insisted upon probable cause as a minimum requirement for a reasonable search permitted by the Constitution. As a general rule, it is also required the judgment of a magistrate on the probable-cause issue and the issuance of a warrant before a search is made. Only in exigent circumstances will the judgment of the police as to probable cause serve as a sufficient authorization for a search. *Carroll, supra*, holds a search warrant unnecessary where there is probable cause to search an automobile stopped on the highway; the car is movable, the occupants are alerted, and the car's contents may never be found again if a warrant must be obtained. Hence, an immediate search is constitutionally permissible."[11]

---

[11] *Chambers, supra*, at pp 50-51.

The instant case did not involve "exigent circumstances" which would justify a search without a warrant. Here, unlike *Chambers, supra*, the automobile was already in the process of being lawfully taken into police custody. Since the car and its occupants were already in police custody, the police could apply for a search warrant without any reasonable possibility that the car could be taken out of the jurisdiction or that contraband could be removed before a search could be conducted. Thus, it was not necessary here to make the choice that in *Chambers* constituted the basis for upholding the validity of the search. There was no danger here that the car would flee and no longer be available after obtaining of a search warrant if it proved obtainable.

Having decided that Sgt. Hawks' second "inventory" search of the automobile was unreasonable in scope, it is unnecessary for us to address defendant's two other allegations of error. The decision of the lower court is reversed and defendant's conviction is vacated.

REVERSED.

## DISSENTING OPINION OF JUDGE DENEWETH

I must respectfully dissent. I have no quarrel with the statement of facts in my Brother's opinion. I do not, however, believe that the search of the vehicle itself or the scope of that search was unreasonable in any way whatsoever. I would affirm.

As my brothers point out, the validity of inventory searches of vehicles has been repeatedly upheld. This includes searches of glove compartments. See *South Dakota v. Opperman*, 428 US 364, 96 S Ct 3092, 49 L Ed 2d

1000 (1976). The test of whether the search is unreasonable depends upon the facts and circumstances of each case.

In the case at bar, the car was stopped on the highway, and, as my brother notes at p. 4 of his opinion, was a proper subject for an impoundment and for an inventory search.

Marijuana, a perishable substance, was found in the glove compartment. The possession of marijuana being illegal, it also amounted to contraband. Given the plethora of cases that have appeared before this Court, it would appear that its members ought to take judicial notice that marijuana is frequently secreted in the more inaccessible parts of motor vehicles. Surely, all law enforcement personnel are aware of this fact.

The evidence shows at least two circumstances justifying the second search. The car was on the highway and a danger to other traffic and was already discovered to have contraband contained in its various compartments, i.e. the glove compartment. See *Chambers v. Maroney*, 399 US 42, 90 S Ct 1975, 26 L Ed 2d 419 (1970). Moreover, there was a clear possibility that the occupants of the vehicle could have had unknown confederates who would return to remove the secreted contraband. *Chambers, supra*. These exigent circumstances justified Sgt. Hawks' second search.

I would affirm.

# Opposition

ORIGINAL

RECEIVED
DEC 9 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

NO. 81-593

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

-vs-

LAMONT CHARLES THOMAS,

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE

SUPREME COURT OF THE UNITED STATES

# RESPONDENT'S BRIEF IN OPPOSITION

BY: DAVID J. HOFFMAN
Attorney for Respondent
1004 Joslyn Rd.
Pontiac, Michigan 48055
(313) 332-3370

## QUESTION PRESENTED

•WHETHER THE POLICE CAN SEARCH AN AUTOMOBILE WITHOUT FIRST OBTAINING A WARRANT WHERE NO EXIGENT CIRCUMSTANCES EXIST AND THERE IS NO PROBABLE CAUSE TO SEARCH PRIOR TO THE SEIZURE OF THE VEHICLE?

TABLE OF CONTENTS


| | Page |
|---|---|
| Table of Authorities | iii |
| Statement of Facts | 1 |
| Reasons for Denying the Writ of Certiorari | 3 |
| Conclusion | 6 |

## TABLE OF AUTHORITIES

Cases: Page

Chambers v Maroney, 399 US 42;90 S Ct 1975; 26 L Ed 2d 419 (1970) ..... 3;4;5

Texas v White, 423 US 67;96 S Ct 304;46 L Ed 2d 209 (1975) ..... 3

South Dakota v Opperman, 428 US 364;49 L Ed 2d 1000 96 S Ct 3092 (1976) ..... 5

## STATEMENT OF FACTS

On May 15, 1979, Respondent Lamont Thomas was convicted in an Oakland County Circuit Court bench trial of carrying a concealed waepon, contrary to MCL 750.227;MSA 28.424. On August 17, 1979, Appellant was sentenced to an imprisonment term of three (3) to five (5) years.

On August 16, 1979, Respondent made a motion for a new trial or a judgement notwithstanding the verdict, claiming that the gun upon which the charge was based was produced through an illegal search and seizure. The motion was denied by the trial judge, who was unable to conclude that the search and seizure was unreasonable. Respondent appealed as of right to the Court of Appeals, who reversed his conviction because of the illegal search and seizure on February 9, 1981. On March 17, 1981, the Court of Appeals denied Petitioner's Application For Rehearing. On July 28, 1981, the Michigan Supreme Court denied Petitioner's Application For Leave To Appeal.

At trial, Sergeant Hawks testified that he and his partner, Officer Brown, stopped a vehicle on Lake Street in Pontiac, Michigan, that had failed to make a signal for a left-hand turn at the intersection of Orchard Lake Road and Lake Street. (R, 25)

Hawks placed Repondent under arrest for open intoxicants in a motor vehicle. (R,20) The driver of the vehicle was issued a citation for failure to have a driver's license. (R,30)

When asked whose vehicle it was, Respondent stated, 'Me and my old lady's." (R,30) Respondent and the driver were taken to the patrol vehicle. (R,30) Pursuant to departmental policy, a wrecker was called to tow the vehicle.

Prior to the arrival of the wrecker, Officer Brown searched the vehicle, pursuant to departmental policy, (R,31) and dis-

covered two bags of suspected marijuana in the glove compartment. (R,31) Sergeant Hawks then proceeded to search the vehicle again, also pursuant to departmental policy, (R,34) and discovered a gun in a closed air vent underneath the dashboard, (R,62) although he had no idea what was under the dashboard. (R,58)

## REASONS FOR DENYING THE WRIT OF CERTIORARI

Petitioner's reliance on this Court's holding in Texas v White, 423 US 67;96 S Ct 304;46 L Ed 2d 209 (1975) and their narrow reading of Chambers v Maroney, 399 US 42;90 S Ct 1975; 26 L Ed 2d 419 (1970) is misplaced in the case before this Court. In both Texas v White, supra, and Chambers v Maroney, supra, the police had probable cause to arrest the defendants prior to the stop and seizure of their automobiles. At the time of the seizure of the vehicles the police officers had probable cause to believe that the vehicles carried fruits of a crime recently committed. This probable cause existed at a time when the vehicles were clearly mobile and loss of evidence was very possible.

The rationale this Court used in Chambers v Maroney, supra, which obviates the general rule that requires exigent circumstances be present to justify a probable cause warrantless search, was as follows;

> For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment.[1]
>
> In that event there is little to choose in terms of practical consequences between an immediate search without a warrant and the car's immobilization until a warrant is obtained.[2]

There was no probable cause to search the vehicle the respondent was riding in at the time of the initial stop. Only a traffic violation had taken place. There still existed no

1. Chambers v Maroney, supra, at 1981.
2. Ibid.

probable cause to search at the time of the arrest of the respondent for having open intoxicants in the vehicle. And even at the time the police seized the vehicle there existed no probable cause to search as the seizure was done pursuant to "departmental policy."

Since there existed no probable cause to search prior to the seizure of the respondents vehicle there existed no right to conduct an immediate search according to the narrow holding in Chambers v Maroney, supra. The broader holding in Chambers v Maroney, supra, would be controlling in the instant case in that "As a general rule, it has also required the judgment of a magistrate on the probable-cause issue and the issuance of a warrant before a search is made. Only in exigent circumstances will the judgment of the police as to probable cause serve as a sufficient authorization for a search". [3]

The Petitioner is suggesting that there is no difference between police stopping, seizing and searching a vehicle they had probable cause to believe contained fleeing felons and fruits of a crime and police stopping a vehicle for a minor traffic violation, seizing the vehicle based on "departmental policy", searching the vehicle also due to "departmental policy" and then searching the vehicle a second time pursuant to "departmental policy." Exceptions have been made to the warrant requirements set forth in the Fourth Amendment but each has been based on special, exigent circumstances, but never based on an unexpressed, unknown "departmental policy." The Fourth Amendment was not written to protect police from choosing between two undesirable options as petitioner maintains, but it was written to protect citizens from unreasonable searches and seizures, such as

3. Chambers v Maroney, supra, at p 1981.

in this case.

Effectively, petitioner is suggesting that a warrant is no longer needed in vehicular stops, even for the most minor traffice offenses. Chambers v Maroney, supra, does not sanction a result such as petitioner is seeking. Only when probable cause exists at the time of the seizure of the automobile will the warrant requirement be waived.

No justification or reason was ever given by the police as to why they seized the respondent's vehicle other then it was policy. The respondent was never asked what he wanted done with the vehicle nor was there any suggestion that the automobile was seized because it would "jeopardize both the public saftey and the efficient movement of vehicular traffic," South Dakota v Opperman, 428 US 364;49 L Ed 2d 1000; 96 S Ct 3092 (1976), which would validate the impoundment of the automobile.

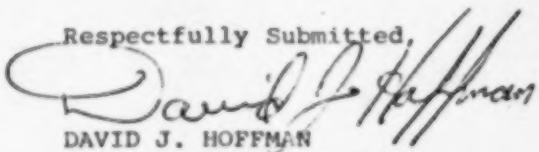
Moreover, the petitioner's entire contention fails because it was never suggested by Sergeant Hawks that his search was based on any sort of probable cause. His only rationalization for the search was because it was "departmental policy."

In summary, the Michigan Court of Appeals correctly suppressed the evidence in this case as being seized in violation of the Fourth Amendment. The Court of Appeals properly applied Chambers v Maroney, supra, in holding that some exigent circumstances were necessary as probable cause to search did not exist at the time of the seizure of the vehicle. This, coupled with the fact that the search was based on departmental policy and not probable cause, is sufficient for this Court to deny this petition for writ of certiorari.

## CONCLUSION

WHEREFORE, Respondent respectfully requests that this Honorable Court deny this petition for a writ of certiorari to review the judgment of the Michigan Court of Appeals.

Respectfully Submitted,



DAVID J. HOFFMAN
Attorney for Respondent
1004 Joslyn Rd.
Pontiac, Michigan 48055
(313) 332-3370

RECEIVED
DEC 9 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1981

NO. 81-593

MICHIGAN,

Petitioner,

-vs-

LAMONT CHARLES THOMAS,

Respondent.

DAVID J. HOFFMAN (P 28668)
Attorney for Respondent

CERTIFICATE OF SERVICE

I, DAIVD J. HOFFMAN, Attorney for Respondent, LAMONT CHARLES THOMAS, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 4thday of December 1981, I served copies of the foregoing Motion for Leave to Proceed in Forma Pauperis, Affidavit in Support of Motion for Leave to Proceed in Forma Pauperis, and Respondent's Brief in Opposition to Petition for a Writ of Certiorari to the Supreme Court of the United States by personally delivering same to the Attorney for Petitioner, L. BROOKS PATTERSON, Prosecuting Attorney of Oakland County, at 1200 N. Telegraph Road, Pontiac, Michigan, 48053.

It is further certified that all parties required to be served have been served.

DAVID J. HOFFMAN
Attorney for Respondent
1004 Joslyn Rd.
Pontiac, MI 48055
332-3370

Law Offices Of
David J. Hoffman
1004 Joslyn
Pontiac, MI 48055
(313) 332-3370

ORIGINAL

RECEIVED
DEC 9 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

NO. 81-593

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

-vs-

LAMONT CHARLES THOMAS,

Respondent,

# PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

# RESPONDENT'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

BY: DAVID J. HOFFMAN
Attorney for Respondent
1004 Joslyn Rd.
Pontiac, Michigan 48055
(313) 332-3370

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1981

NO. 81-593

MICHIGAN,

Petitioner,

-vs-

LAMONT CHARLES THOMAS,

Respondent.

_____/

MOTION OF RESPONDENT FOR LEAVE TO PROCEED IN FORMA PAUPERIS

LAMONT CHARLES THOMAS, the Respondent, respectfully moves the Court for leave to proceed herein in forma pauperis, in accordance with the provisions of Title 28, United States Code, Section 1915, and Rule 46 of this Court, and to file herein his response to the petition for writ of certiorari to the Supreme Court of the United States in single counterpart, without printing the same. The typed brief of respondent in opposition is presented herewith for filing.

LAMONT CHARLES THOMAS, the Respondent, sought leave and was granted leave to proceed in forma pauperis at the trial court level in the Oakland County Circuit Court and at the appellate court level in the Michigan Court of Appeals and the Supreme Court of the State of Michigan.

The affidavit of LAMONT CHARLES THOMAS, Respondent, in support of this motion is filed herewith.

Respectfully Submitted,

David J. Hoffman

DAVID J. HOFFMAN (P 28668)
Attorney for Respondent
1004 Joslyn Rd.
Pontiac, Michigan 48055
(313) 332-3370

LAW OFFICES OF
DAVID J. HOFFMAN
1004 JOSLYN
PONTIAC, MI 48055
(313) 332-3370

ORIGINAL

RECEIVED
DEC 9 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

NO. 81-593

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

-vs-

LAMONT CHARLES THOMAS,

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE

SUPREME COURT OF THE UNITED STATES

RESPONDENT'S AFFIDAVIT IN SUPPORT OF
MOTION TO PROCEED IN FORMA PAUPERIS

BY: DAVID J. HOFFMAN
Attorney for Respondent
1004 Joslyn Rd.
Pontiac, Michigan 48055
(313) 332-3370

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1981

NO. 81-593

MICHIGAN,

Petitioner,

-vs-

LAMONT CHARLES THOMAS,

Respondent.

DAVID J. HOFFMAN (P 28668)
Attorney for Respondent

AFFIDAVIT IN SUPPORT OF MOTION
TO PROCEED FORMA PAUPERIS

I, LAMONT CHARLES THOMAS, being furst duly sworn, depose and say that I am the Respondent in the above entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs, or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or printing or to give security therefor.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the costs of defending this appeal are true.

1. Are you presently employed? NO

2. Have you received within the past 12 months any income from a business, profession, or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? NO

3. Do you own any cash or checking or savings accounts? YES,

a. $280.00-joint with wife

4. Do you own any real estate, stocks, bonds, notes, auto-

LAW OFFICES OF
DAVID J. HOFFMAN
1004 JOSLYN
PONTIAC, MI 48053
(313) 332-3370

mobiles, or other valuable property (excluding household furnishings and clothing)? YES

a. Real Estate - Value $28,000.00 Owed $28,000.00
joint with wife

b. 1974 Duster automobile $700.00
joint with wife

c. 1974 Honda Motorcycle $1,200.00

5. List the persons who are dependent on you for support and state your relationship to those persons.

VERNITA THOMAS - wife

DEVINA THOMAS - daughter

I understand that a false statement or answer to any questions in this affidavit will subject me to penalities for perjury.

Lamont Charles Thomas

LAMONT CHARLES THOMAS, Respondent

STATE OF MICHIGAN)
)ss
COUNTY OF OAKLAND)

Subscribed and sworn to before me this 1st day of December, 1981.

David J. Hoffman

DAVID J. HOFFMAN, Notary Public,
Oakland County, Michigan
My Commission Expires:
12/6/83

LAW OFFICES OF
DAVID J. HOFFMAN
1004 JOSLYN
PONTIAC, MI 48053
(313) 333-9370